

HOUSE BILL NO. 667

INTRODUCED BY WANZENRIED, TESTER, ARNTZEN, LIND, BRUEGGEMAN, MCNUTT, MATTHEWS,
KITZENBERG, A. OLSON, ROBERTS, COCCHIARELLA, KLOCK
BY REQUEST OF THE GOVERNOR AND THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SMALL BUSINESS HEALTH INSURANCE POOL;
PROVIDING FOR EMPLOYER PREMIUM INCENTIVE PAYMENTS, EMPLOYEE PREMIUM ASSISTANCE
PAYMENTS, AND TAX CREDITS TO BE ADMINISTERED BY THE COMMISSIONER OF INSURANCE FOR
ELIGIBLE SMALL EMPLOYERS WHO PROVIDE CERTAIN GROUP HEALTH PLAN COVERAGE FOR THEIR
ELIGIBLE EMPLOYEES; PROVIDING THAT CERTAIN ELIGIBLE SMALL EMPLOYERS MAY RECEIVE
PREMIUM INCENTIVE PAYMENTS AND EMPLOYEES MAY RECEIVE ASSISTANCE FOR PAYING
PREMIUMS FOR HEALTH INSURANCE PURCHASED THROUGH THE SMALL BUSINESS HEALTH
INSURANCE POOL; ALLOWING THE TAX CREDIT TO BE CLAIMED WHEN FILING TAX RETURNS;
CREATING THE SMALL BUSINESS HEALTH INSURANCE POOL BOARD OF DIRECTORS AND
ESTABLISHING ITS DUTIES; PROVIDING AUTHORITY TO THE BOARD TO ESTABLISH ELIGIBILITY
REQUIREMENTS FOR RECEIVING THE PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE
PAYMENTS, AND TAX CREDITS; PROVIDING RULEMAKING AUTHORITY TO THE COMMISSIONER TO
IMPLEMENT THE PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, AND TAX
CREDITS; PROVIDING PENALTIES FOR WRONGFULLY OBTAINING PREMIUM INCENTIVE PAYMENTS,
PREMIUM ASSISTANCE PAYMENTS, OR THE TAX CREDIT; AUTHORIZING THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES TO PURSUE MEDICAID FUNDING FOR EMPLOYEE PREMIUM
ASSISTANCE; AMENDING THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO CLARIFY FUNDING
FOR PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE PAYMENTS, AND TAX CREDITS AND
PROVIDING FOR CONTINGENT FUNDING; AMENDING SECTIONS 15-30-111, 15-30-303, 15-31-511,
33-22-1815, 45-6-301, AND 53-6-1201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Establishment of small business health insurance pool --INTENT.** (1)

1 There is established a nonprofit legal entity known as the small business health insurance pool, with participating
2 membership consisting of all employer members of the purchasing pool.

3 (2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the
4 provisions of 33-22-1815 through 33-22-1817.

5 (3) ~~The~~ SUBJECT TO THE CONDITIONS IN 53-6-1201, THE purchasing pool shall make group health plan
6 coverage available effective January 1, 2006.

7 (4) IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD:

8 (A) ESTABLISH CRITERIA THAT WILL ALLOW THE GREATEST NUMBER OF EMPLOYEES POSSIBLE TO BE ELIGIBLE
9 FOR PREMIUM ASSISTANCE PAYMENTS BY NOT PERMITTING ELIGIBILITY FOR PREMIUM ASSISTANCE PAYMENTS UNDER
10 [SECTIONS 1 THROUGH 9] TO EMPLOYEES WHO CONTINUE TO MAINTAIN ENROLLMENT IN ANOTHER COMPREHENSIVE
11 HEALTH INSURANCE COVERAGE THROUGH A SPOUSE, PARENT, OR OTHER PERSON; AND

12 (B) ALLOW ELIGIBLE SMALL EMPLOYERS TO DETERMINE THE LENGTH OF THE WAITING PERIOD THAT WILL APPLY
13 TO THEIR EMPLOYEES, AS LONG AS THE WAITING PERIOD:

14 (I) IS NOT MORE THAN 12 MONTHS; AND

15 (II) APPLIES TO ALL ELIGIBLE EMPLOYEES WITHIN THAT SMALL GROUP IN THE SAME MANNER.

16 (5) THE LEGISLATIVE AUDITOR SHALL CONDUCT OR HAVE CONDUCTED, AT LEAST ONCE EACH BIENNIUM COVERING
17 THE PRIOR 2 FISCAL YEARS, A FINANCIAL COMPLIANCE AUDIT OF THE BOARD AND THE PURCHASING POOL. THE COST OF
18 THE AUDIT MUST BE PAID FOR BY THE PURCHASING POOL AS A DIRECT COST NOT SUBJECT TO THE CAP ON ADMINISTRATIVE
19 EXPENSES.

20
21 NEW SECTION. Section 2. Small business health insurance pool -- definitions. As used in
22 [sections 1 through 9], the following definitions apply:

23 (1) "Board" means the board of directors of the small business health insurance pool as provided for
24 in [section 3].

25 (2) "Dependent" has the meaning provided in 33-22-1803.

26 (3) "Eligible employee" has the meaning provided in 33-22-1803.

27 (4) (a) "Eligible small employer" means, ~~in connection with a group health plan with respect to a~~
28 ~~calendar year and a plan year,~~ an employer who IS SPONSORING OR WILL SPONSOR A GROUP HEALTH PLAN AND WHO
29 ~~employed an average of~~ at least two but not more than nine employees ~~on business days~~ during the preceding
30 calendar year and who employs at least two BUT NOT MORE THAN NINE employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(5) "Group health plan" has the meaning provided in 33-22-140.

(6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) "Premium assistance payment" means a payment provided for in [section 6] ~~to~~ ON BEHALF OF eligible employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) "Premium incentive payment" means a payment provided for in [section 7(1)(b)] to eligible small employers who qualify under [section 7] to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) "Purchasing pool" means the small business health insurance pool.

(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to ~~small~~ APPLICABLE employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of [sections 1 through 9].

(11) "Related employers" means persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.

(12) "Tax credit" means a refundable tax credit as provided for in [section 8].

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes.

NEW SECTION. Section 3. Board of directors -- composition -- appointment -- compensation.

(1) There is a board of directors of the small business health insurance pool, consisting of seven directors and two nonvoting members serving 3-year staggered terms and appointed in the following manner:

(a) three directors must be appointed by the commissioner, one of whom must be a person who has specialized knowledge regarding health insurance, one of whom must be a consumer representing the small business community, and one of whom must be a consumer representing the public interest;

(b) four directors must be appointed by the governor, one of whom must be a management-level

1 individual with knowledge of state employee health benefit plans, one of whom must be a management-level
2 individual with knowledge of medicaid services, one of whom must be a consumer representing the public
3 interest, and one of whom must be a consumer representing the small business community.

4 (2) Each director is entitled to one vote on the board.

5 (3) The commissioner and the governor shall each appoint a representative FROM THEIR RESPECTIVE
6 STAFFS to participate in all board meetings as nonvoting members.

7 (4) The ~~consumer-representative~~ directors must be compensated and receive travel expenses in the
8 same manner as members of the quasi-judicial boards under 2-15-124(7). The costs of conducting the meetings
9 of the purchasing pool and the compensation for its board of directors must be borne by the purchasing pool.

10 (5) A board director or member must be replaced in the same manner as the original appointment if that
11 board member is not actively participating in the affairs of the board.

12
13 **NEW SECTION. Section 4. Powers and duties of board.** (1) The board shall:

14 (a) establish an operating plan that includes but is not limited to administrative and accounting
15 procedures for the operation of the purchasing pool and a schedule for premium incentive and premium
16 assistance payments and that complies with the powers and duties provided for in this section;

17 (b) require employers and employees to reapply for premium incentive payments or premium assistance
18 payments on an annual basis;

19 (c) upon reapplication, give priority to employers and their employees who are already receiving the
20 premium incentive payments and premium assistance payments;

21 (d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and
22 premium assistance payments on behalf of their eligible employees if the number of their employees goes over
23 the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

24 (e) renew purchasing pool group health plan coverage for all employer groups, even if the employer
25 group no longer receives or is eligible for a premium incentive payment;

26 (f) adopt a premium incentive payment amount that is the same for all registered eligible small
27 employers who join the purchasing pool or obtain qualified association health plan coverage;

28 (g) adopt premium assistance payment amounts that, in combination with the premium incentive
29 payments, are consistent with the amounts provided for in [sections 6 and 8] or with the assistance of the
30 department of public health and human services, adopt a premium assistance payment schedule that is

1 equitably proportional to the income or wage level for eligible employees;

2 (h) establish criteria for determining which employees will be eligible for a premium assistance payment
3 and the amount that the employees will receive from among those eligible small employer groups that have
4 registered with the commissioner pursuant to [section 8] and applied for coverage under the purchasing pool
5 group health plan or qualified association health plan. However, to the extent that federal funds are used to
6 make some premium assistance payments, criteria for those payments must be consistent with any waiver
7 requirements determined by the department of public health and human services pursuant to [section 10].
8 Eligibility for employees is not limited to the waiver eligibility groups.

9 (i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach
10 the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance
11 payments during the current biennium;

12 (j) limit the total ~~number~~ AMOUNT of premium incentive payments and premium assistance payments paid
13 to the amount of available state, federal, and private funding;

14 (k) approve no more than ~~four~~ SIX fully insured group health plans with different benefit levels that will
15 be offered to employers participating in the purchasing pool;

16 (l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers
17 authorized to do business in this state;

18 (m) contract with no more than ~~two~~ THREE health insurance issuers to underwrite the group health plans
19 that will be offered through the purchasing pool;

20 (n) request that the department of public health and human services seek a federal waiver for medicaid
21 matching funds for premium assistance payments based on the department's analysis, as provided in [section
22 10], if it is in the best interests of the purchasing pool;

23 (o) comply with the participation requirements provided for in 33-22-1811; ~~and~~

24 (p) meet at least four times annually; AND

25 (Q) WITHIN 2 YEARS AFTER THE PURCHASING POOL IS ESTABLISHED AND CONSIDERED STABLE BY THE BOARD,
26 EXAMINE THE POSSIBILITY OF OFFERING AN OPPORTUNITY FOR INDIVIDUAL SOLE PROPRIETORS WITHOUT EMPLOYEES TO
27 PURCHASE INSURANCE FROM THE PURCHASING POOL WITHOUT PREMIUM INCENTIVE PAYMENTS, PREMIUM ASSISTANCE
28 PAYMENTS, OR TAX CREDITS.

29 (2) The board may:

30 (a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium;

(g) seek other federal, state, and private funding sources;

(h) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to [section 8];

(i) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of eligible employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(j) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(k) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage.

NEW SECTION. Section 5. Duties of commissioner -- rulemaking authority. ~~The~~ SUBJECT TO THE CONDITIONS IN 53-6-1201, THE commissioner shall:

(1) adopt rules regarding the implementation of [sections 1 through 9], including rules regarding the administration of the premium incentive payments, premium assistance payments, and tax credits, the approval of qualified association health plans, and the registration process~~;~~. THE RULES REGARDING TAX CREDITS MAY NOT RELATE TO THE FILING OF TAX RETURNS AND CLAIMING THE TAX CREDIT ON THE TAX RETURNS.

- (2) supervise the creation of the purchasing pool within the limits described in [sections 1 through 9];
- (3) approve or disapprove the operating plan for the purchasing pool;
- (4) if the board chooses to hire one, approve or disapprove the selection of a third-party administrator to handle the administration of the purchasing pool;
- (5) with the assistance of the department of public health and human services, approve or disapprove the schedule of premium incentive payment or premium assistance payment amounts adopted by the board as provided in [section 4];
- (6) approve or disapprove any contracts between a health insurance issuer and the purchasing pool;
- (7) approve or disapprove all group health plans being offered by insurers through the purchasing pool;
- (8) conduct periodic audits of the financial transactions conducted by the purchasing pool;
- (9) allow up to 30%, or more if requested by the board and approved by the commissioner, of the available funding for the premium incentive payments and premium assistance payments to be applied to small group health plan coverage purchased through a qualified association health plan; and
- (10) make applicable premium incentive payments or premium assistance payments for qualified association health plan coverage on behalf of eligible small employers and employees or direct the purchasing pool to make the payments; and
- (11) approve or disapprove associations as qualified if their members consist of employers who sponsor group health plan coverage for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to ~~small~~ APPLICABLE employer group health insurance law.

NEW SECTION. Section 6. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under [sections 1 through 9] if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under [section 8];

(b) provide or will provide a group health plan for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous

1 years;

2 (d) have been registered as eligible small employer participants by the commissioner as provided in
3 [section 8]; and

4 (e) do not have any employees, not including an owner, partner, or shareholder of the business, who
5 received more than \$75,000 in gross compensation, including bonuses and commissions, from the small
6 employer or related employer in the prior tax year.

7 (2) The commissioner shall establish, by rule, the maximum number of employees that may be
8 employed to qualify as a small employer under subsection (1). However, the number may not be less than two
9 employees or more than nine employees. The maximum number may be different for employers seeking
10 premium incentive payments and premium assistance payments than for employers seeking a tax credit. The
11 number must be set to maximize the number of employees receiving coverage under [sections 1 through 9]. The
12 commissioner may not change the maximum employee number more often than every 6 months. If the
13 maximum number of allowable employees is changed, the change does not disqualify registered employers with
14 respect to the tax year for which the employer has registered.

15 (3) Except as provided in subsection (4), an eligible small employer may claim a tax credit in the
16 following amounts:

17 (a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's
18 spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age;
19 or

20 (ii) not more than \$125 each month for each employee and \$100 each month for each employee's
21 spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or
22 older; and

23 (b) not more than \$40 each month for each dependent, other than the employee's spouse, if the
24 employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition
25 to the employee's spouse.

26 (4) An employer may not claim a tax credit:

27 (a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

28 (b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

29 (c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.

30 (5) An employer may not claim a premium incentive payment in excess of 50% of the total premiums

1 paid by the employer for the qualifying small group.

2
3 **NEW SECTION. Section 7. Filing for tax credit -- filing for premium incentive payments and**
4 **premium assistance payments.** (1) An eligible small employer may:

5 (a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15,
6 chapter 30 or 31; or

7 (b) if the eligible small employer did not sponsor a group health plan for employees during the 2 years
8 prior to the first tax year of registration for the premium incentive payments or premium assistance payments
9 or operates a new business that is less than 2 years old and has never sponsored a group health plan, apply
10 to receive monthly premium incentive payments and premium assistance payments to be applied to coverage
11 obtained through the purchasing pool or ~~other~~ qualified association health plan coverage approved by the
12 commissioner.

13 (2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for
14 the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided
15 for in subsection (1)(b).

16 (3) The premium incentive payments and premium assistance payments provided for in subsection
17 (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative
18 rules.

19 (4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's
20 liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer.
21 The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or
22 15-31-121.

23 (b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter
24 30 or 31, with respect to any amount for which a tax credit is allowed under [sections 1 through 9].

25 (5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim
26 for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's
27 or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall
28 keep a record of each extension and the reason for granting the extension.

29 (6) (a) If an employer that would have a claim under [sections 1 through 9] ceases doing business before
30 filing the claim, the representative of the employer who files the tax return or pays the premium may file the

1 claim.

2 (b) If a corporation that would have a claim under [sections 1 through 9] merges with or is acquired by
3 another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the
4 premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired
5 corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any
6 claim period during which the former eligible corporation remained eligible.

7 (c) If an employer that would have a claim under [sections 1 through 9] files for bankruptcy protection,
8 the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any
9 claim period during which the employer was eligible.

10

11 **NEW SECTION. Section 8. Registration -- funding limitations -- transfers -- maximum number**
12 **-- waiting list -- information transfer for tax credits.** (1) (a) Each eligible small employer that proposes to
13 apply for premium incentive payments and premium assistance payments or a tax credit under [sections 1
14 through 9] must be registered each year with the commissioner. The commissioner shall begin taking new
15 applications for 2006 on October 1, 2005.

16 (b) An eligible small employer may submit a new application for the premium incentive payments and
17 premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's
18 registration for the next year, the registration application must be renewed each year.

19 (c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop
20 accepting renewal applications on October 31 of each year.

21 (d) The registration application must include the number of individuals covered, as of the date of the
22 registration application, under the small group health plan for which the employer is seeking premium incentive
23 payments and premium assistance payments or a tax credit. If, after the initial registration, the number of
24 individuals increases, the employer may apply to register the additional individuals, but those additional
25 individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on
26 available funds.

27 (e) A small employer is not eligible to apply for premium incentive payments and premium assistance
28 payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number
29 that has been established in [section 6] as the maximum number of employees an employer may have in order
30 to qualify for registration for the time period in question.

1 (f) An employer's decision to apply for premium incentive payments and premium assistance payments
2 or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association
3 health plan renews its registration, whichever time period is less. An employer may choose to discontinue
4 receiving any premium incentive payments and premium assistance payments or tax credits at any time.

5 (2) The commissioner shall register qualifying eligible small employers in the order in which applications
6 are received and according to whether or not the application is for premium incentive payments and premium
7 assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and
8 maintain premium incentive payments and premium assistance payments for eligible small employers who have
9 not sponsored group health plans in the previous 2 years and who chose to join the purchasing pool or a
10 qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible
11 small employers who currently sponsor a small group health plan. Funding may be transferred from the allocated
12 fund for premium incentive payments and premium assistance payments to the general fund for tax credits if
13 the board requests the transfer as provided in [section 4] and the commissioner approves the request.

14 (3) (a) The maximum number of eligible small employers is reached when the anticipated amount of
15 claims for premium incentive payments and premium assistance payments and tax credits has reached 95%
16 of the amount of money allocated for premium incentive payments and premium assistance payments and tax
17 credits.

18 (b) The commissioner may establish a waiting list for applicants that are otherwise qualified for
19 registration but cannot be registered because of a lack of money or because the maximum number of eligible
20 small employers has been reached.

21 (c) The commissioner shall mail to each employer registered under this section a notice of registration
22 containing a unique registration number and indicating eligibility for either premium incentive payments and
23 premium assistance payments or a tax credit. THE COMMISSIONER SHALL ALSO ISSUE TO EACH EMPLOYER THAT IS
24 ELIGIBLE FOR PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS OR THE TAX CREDIT A CERTIFICATE,
25 PLACARD, STICKER, OR OTHER EVIDENCE OF PARTICIPATION THAT MAY BE PUBLICLY POSTED.

26 (d) The commissioner shall notify all persons who applied for registration and who were not accepted
27 that they were not registered and the reason that they were not registered.

28 (4) A prospective participant shall apply for registration on a form provided by the commissioner. The
29 prospective participant shall:

30 (a) provide the number of employees and whether the employer qualifies under [section 6];

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in [section 10], the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions.

NEW SECTION. Section 9. Penalties. (1) The commissioner may, after providing an opportunity for a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of [sections 1 through 9]. Failure to pay a fine under this section results in a lien upon the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the special revenue account described in 53-6-1201.

(2) In addition to any penalty provided for in 33-1-317, the commissioner may require a person violating [sections 1 through 9] to make full restitution to the state, including interest of 10% a year from the date of loss, if a violation of [sections 1 through 9] caused a premium incentive payment or premium assistance payment to be paid or a tax credit to be issued to a person who was not entitled to it.

(3) A person who purposely or knowingly violates [sections 1 through 9] and receives a premium incentive payment or premium assistance payment or tax credit that the person is not entitled to commits the offense of theft, which is punishable as provided in 45-6-301.

(4) A person who purposely or knowingly violates [sections 1 through 9] and makes false statements, knowing those statements are not true, commits the offense of unsworn falsification to authorities, which is punishable as provided in 45-7-203.

(5) Any fines or restitution collected pursuant to this section must be deposited in the special revenue account in 53-6-1201 and dedicated to the payment of premium incentive payments and premium assistance payments or tax credits or funding new programs to assist eligible small employers with the cost of providing health insurance benefits.

NEW SECTION. Section 10. Health insurance premium assistance -- legislative intent -- application for section 1115 waiver -- duties of board of directors of small business health insurance pool, commissioner of insurance, and department of public health and human services. (1) It is the intent of the legislature that the small business health insurance pool board of directors, established in [section 3], consider the option of funding a portion of the premium incentive payments on behalf of eligible small employers or premium assistance payments on behalf of eligible employees under [sections 1 through 9] to the extent possible through a section 1115 waiver demonstration project of medicaid coverage as authorized by section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(2) The department shall prepare an analysis of the section 1115 waiver for the board for its consideration in deciding whether to request that the department seek the section 1115 waiver as provided in [section 4].

(3) (a) The department, as the designated single state agency for the receipt of medicaid, may seek, if requested by the board, approval from the U.S. department of health and human services for inclusion in a section 1115 waiver for the premium incentive payments and premium assistance payments to be provided on behalf of employees eligible under [sections 1 through 9] who meet the applicable income standard established

1 through the section 1115 waiver.

2 (b) The commissioner of insurance and the board shall cooperate with the department in obtaining
3 approval for the inclusion of the premium assistance payment coverage group in a section 1115 waiver.

4 (4) Upon approval of a premium assistance payment coverage group through a section 1115 waiver:

5 (a) the eligibility of program participants for the section 1115 demonstration premium assistance
6 coverage group must be determined by the department. The commissioner of insurance shall provide employee
7 and other information to the department as necessary for section 1115 waiver eligibility determinations.

8 (b) the department may access confidential employee and employer information necessary for
9 administration of the premium assistance payment coverage group. The commissioner shall provide employee,
10 employer, and other information to the department as necessary for the administration of the section 1115
11 waiver.

12 (c) the commissioner of insurance and the board shall provide to the department the funds or certification
13 necessary to provide the state match for the medicaid money to be expended on behalf of the section 1115
14 waiver premium incentive payment or premium assistance payment coverage groups and for the administration
15 of the coverage groups by the department;

16 (d) the commissioner of insurance, the board, and the department shall cooperate in the adoption of
17 administrative rules necessary for the implementation of the premium incentive payments and premium
18 assistance payments. The department shall adopt rules for the implementation of medicaid coverage for
19 employees participating in the program as provided in the conditions for the waiver.

20 (e) the commissioner and the board shall cooperate with the department to ensure that expenditures
21 of medicaid money are made in accordance with the requirements of federal law and the approval for the section
22 1115 waiver.

23 (5) The department may coordinate or include the authorization to seek the waiver granted by this
24 section with any other authority granted to the department in this part to seek section 1115 waivers.

25
26 **NEW SECTION. Section 11. Tax credit for health insurance premiums paid -- eligible small**
27 **employers -- pass-through entities.** (1) There is a tax credit, determined under [sections 1 through 9], for
28 eligible small employers who are individuals against the taxes imposed in 15-30-103 for qualifying premiums
29 paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and
30 dependents under a group health plan as defined in [section 2].

(2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

NEW SECTION. Section 12. Tax credit for health insurance premiums paid -- eligible small employers -- corporations. There is a tax credit, as determined under [sections 1 through 9], for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan as defined in [section 2].

Section 13. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing

1 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal
2 adjusted gross income.

3 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
4 include the following, which are exempt from taxation under this chapter:

5 (a) (i) all interest income from obligations of the United States government, the state of Montana, a
6 county, municipality, or district, or other political subdivision of the state and any other interest income that is
7 exempt from taxation by Montana under federal law;

8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
9 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

10 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and
11 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

12 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
13 received as defined in 15-30-101;

14 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

15 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
16 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
17 excess of \$30,000 as shown on the taxpayer's return;

18 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
19 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
20 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
21 as shown on their joint return;

22 (d) all Montana income tax refunds or tax refund credits;

23 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

24 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
25 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on
26 January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide
27 food, beverage, or lodging;

28 (g) all benefits received under the workers' compensation laws;

29 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
30 employee under federal law;

1 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
2 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

3 (j) principal and income in a medical care savings account established in accordance with 15-61-201
4 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
5 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

6 (k) principal and income in a first-time home buyer savings account established in accordance with
7 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time
8 purchase of a single-family residence;

9 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family
10 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
11 beneficiary;

12 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
13 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

14 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
15 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
16 of the same estate or trust for the same tax period;

17 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
18 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
19 is not provided for federal income tax purposes;

20 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income
21 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the
22 child and taxpayer meet the filing requirements in 15-30-142.

23 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
24 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

25 (r) that part of the refundable credit provided in [section 6] that reduces Montana tax below zero.

26 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
27 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
28 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
29 is effective.

30 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business

1 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38
2 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages
3 and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and
4 salaries were used to compute the credit. In the case of a partnership or small business corporation, the
5 deduction must be made to determine the amount of income or loss of the partnership or small business
6 corporation.

7 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
8 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
9 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
10 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
11 Montana return.

12 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
13 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
14 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
15 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
16 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
17 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
18 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
19 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
20 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
21 or expected to last at least 12 months.

22 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to
23 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,
24 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana
25 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the
26 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

27 (8) An individual who contributes to one or more accounts established under the Montana family
28 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the
29 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,
30 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions

made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 14. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or

1 proceeding:

2 (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

3 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes
4 when the reports or facts shown by the reports are directly involved in the action or proceedings.

5 (b) The court may require the production of and may admit in evidence only as much of the reports or
6 of the facts shown by the reports as are pertinent to the action or proceedings.

7 (3) This section does not prohibit:

8 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return
9 or report filed in connection with the taxpayer's tax;

10 (b) the publication of statistics classified to prevent the identification of particular reports or returns and
11 the items of particular reports or returns; or

12 (c) the inspection by the attorney general or other legal representative of the state of the report or return
13 of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom
14 an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

15 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the
16 department orders them to be destroyed.

17 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by
18 imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee
19 of the state, the offender must be dismissed from office and may not hold any public office in this state for a
20 period of 1 year after dismissal.

21 (6) This section may not be construed to prohibit the department from providing taxpayer return
22 information and information from employers' payroll withholding reports to:

23 (a) the department of labor and industry to be used for the purpose of investigation and prevention of
24 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

25 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,
26 and abuse under the workers' compensation program.

27 (7) The department may permit the commissioner of internal revenue of the United States or the proper
28 officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either
29 officer to inspect the return of income of any individual or may furnish to the officer or an authorized
30 representative an abstract of the return of income of any individual or supply the officer with information

1 concerning an item of income contained in a return or disclosed by the report of an investigation of the income
2 or return of income of an individual, but the permission may be granted or information furnished only if the
3 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this
4 state charged with the administration of this chapter.

5 (8) The department shall furnish:

6 (a) to the department of justice all information necessary to identify those persons qualifying for the
7 additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of
8 justice to administer the provisions of 61-5-105;

9 (b) to the department of public health and human services information acquired under 15-30-301,
10 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
11 assistance fraud and abuse, provided notice to the applicant has been given;

12 (c) to the department of labor and industry for the purpose of prevention and detection of fraud and
13 abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs
14 information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and
15 industry is an employee, an independent contractor, or self-employed;

16 (d) to the department of fish, wildlife, and parks specific information that is available from income tax
17 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
18 fishing licenses;

19 (e) to the board of regents information required under 20-26-1111;

20 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax
21 information as provided in 5-12-303. The information provided to the office of budget and program planning must
22 be the same as the information provided to the legislative fiscal analyst.

23 (g) to the department of transportation farm income information based on the most recent income tax
24 return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the
25 applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department
26 of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

27 (h) to the commissioner of insurance's office all information necessary for the administration of the small
28 business health insurance tax credit provided for in [sections 1 through 9]."

29
30 **Section 15.** Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with

a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4); ~~or~~

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information

1 to a person representing the United States or another state unless the United States or the other state grants
2 substantially similar privileges to an officer of this state charged with the administration of this chapter.

3 (f) the disclosure of information to the commissioner of insurance's office that is necessary for the
4 administration of the small business health insurance tax credit provided for in [sections 1 through 9].

5 (4) The department shall on request:

6 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished
7 to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in
8 subsection (1); and

9 (b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and
10 program planning, but the information furnished to the legislative fiscal analyst and the office of budget and
11 program planning is subject to the same restrictions on disclosure outside those offices as provided in
12 subsection (1).

13 (5) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in
14 the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted
15 of violating this section, the person forfeits office and may not hold any public office or public employment in the
16 state for a period of 1 year after conviction."
17

18 **Section 16.** Section 33-22-1815, MCA, is amended to read:

19 **"33-22-1815. Qualifications for voluntary purchasing pool.** A voluntary purchasing pool of disability
20 insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance
21 with the following provisions:

22 (1) It contains at least 51 eligible employees.

23 (2) It establishes requirements for membership. The voluntary purchasing pool shall accept for
24 membership any small employers and may accept for membership any employers with at least 51 eligible
25 employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may
26 not exclude any small employers that otherwise meet the requirements for membership on the basis of claim
27 experience, occupation, or health status.

28 (3) It holds an open enrollment period at least once a year during which new members can join the
29 voluntary purchasing pool.

30 (4) It offers coverage to eligible employees of member employers and to the employees' dependents.

Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool must rate the entire purchasing pool group as a whole and charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) ~~Rates~~ Except for the rates for the small business health insurance pool established in [section 1], rates for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.

(c) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool; or by member employers; ~~or by eligible employees and their dependents.~~

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer."

Section 17. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over

1 stolen property knowing the property to have been stolen by another and:

2 (a) has the purpose of depriving the owner of the property;

3 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
4 owner of the property; or

5 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
6 probably will deprive the owner of the property.

7 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
8 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
9 agency, regardless of the original source of assistance, by means of:

10 (a) a knowingly false statement, representation, or impersonation; or

11 (b) a fraudulent scheme or device.

12 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
13 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
14 71 or 72, by means of:

15 (a) a knowingly false statement, representation, or impersonation; or

16 (b) deception or other fraudulent action.

17 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits
18 insurance fraud as provided in 33-1-1202 or 33-1-1302; ~~or~~

19 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;

20 or

21 (c) purposely or knowingly receives small business health insurance premium incentive payments or
22 premium assistance payments or tax credits under [sections 1 through 9] to which the person is not entitled.

23 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to
24 deprive the owner of the property, the person:

25 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer
26 or over property entrusted to the person; or

27 (b) purposely or knowingly obtains by deception control over property of the person's employer or over
28 property entrusted to the person.

29 (8) (a) A person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined
30 an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

1 A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not
2 to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be
3 imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

4 (b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property
5 exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not
6 to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

7 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement
8 shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined
9 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the
10 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison
11 term may be ordered.

12 (9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
13 whether from the same person or several persons, may be aggregated in determining the value of the property."
14

15 **Section 18.** Section 53-6-1201, MCA, is amended to read:

16 **"53-6-1201. Special revenue fund -- health and medicaid initiatives -- CONTINGENCY.** (1) There is a
17 health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account
18 is to be administered by the department of public health and human services.

19 (2) There must be deposited in the account:

20 (a) money from cigarette taxes deposited under 16-11-119(1)(c); and

21 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b).

22 (3) This account may be used only to provide funding for:

23 (a) the state funds necessary to take full advantage of available federal matching funds in order to
24 maximize enrollment of eligible children under the children's health insurance program, provided for under Title
25 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account
26 is intended to increase enrollment rates for eligible children in the program and not to be used to support existing
27 levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

28 (b) a new need-based prescription drug program established by the legislature for children, seniors,
29 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

30 (c) increased medicaid services and medicaid provider rates. The increased revenue is intended to

1 increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended
2 traditional level of appropriation for medicaid services and medicaid provider rates.

3 (d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~or~~

4 (e) to fund new programs to assist eligible small businesses employers with the costs of providing health
5 insurance benefits to eligible employees; if these tax credits or programs are established by the legislature after
6 the effective date of this section;

7 (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments
8 and premium assistance payments, as provided in [sections 1 through 9], NOT TO EXCEED \$600,000 IN THE FIRST
9 YEAR OR 5% FOR EACH SUCCESSIVE YEAR OF THE APPROPRIATION FOR THE TAX CREDIT, THE PURCHASING POOL, AND
10 THE PREMIUM INCENTIVE PAYMENTS AND PREMIUM ASSISTANCE PAYMENTS; and

11 (g) to provide a state match for the medicaid program for premium incentive payments or premium
12 assistance payments to the extent that a waiver is granted by federal law as provided in [section 10].

13 (4) (A) THE MONEY APPROPRIATED FOR FISCAL YEAR 2006 FOR THE PROGRAM IN SUBSECTIONS (3)(D) THROUGH
14 (3)(G) MAY NOT BE EXPENDED UNTIL THE OFFICE OF BUDGET AND PROGRAM PLANNING HAS CERTIFIED THAT \$25 MILLION
15 HAS BEEN DEPOSITED IN THE ACCOUNT PROVIDED FOR IN THIS SECTION.

16 (B) FOR EACH SUCCEEDING FISCAL YEAR, ON OR BEFORE JULY 1, THE BUDGET DIRECTOR SHALL CALCULATE A
17 BALANCE REQUIRED TO SUSTAIN THE PROGRAM FOR EACH FISCAL YEAR OF THE NEXT BIENNIUM. IF THE BUDGET DIRECTOR
18 CERTIFIES THAT THE RESERVE BALANCE WILL BE SUFFICIENT, THEN THE COMMISSIONER MAY EXPEND THE REVENUE FOR
19 THE PROGRAM AS APPROPRIATED. IF THE BUDGET DIRECTOR DETERMINES THAT THE RESERVE BALANCE OF THE REVENUE
20 WILL NOT SUPPORT THE LEVEL OF APPROPRIATION, THE BUDGET DIRECTOR SHALL NOTIFY THE COMMISSIONER. UPON
21 RECEIPT OF THE NOTIFICATION, THE COMMISSIONER SHALL ADJUST THE OPERATING BUDGET FOR THE PROGRAM TO
22 REFLECT THE AVAILABLE REVENUE AS DETERMINED BY THE BUDGET DIRECTOR.

23 (C) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are
24 established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

25 (5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the
26 appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility
27 standards, services authorized, and payment amount during the past five biennial budgets.

28 (6) The department of public health and human services may adopt rules to implement this section."
29

30 NEW SECTION. SECTION 19. CONTINGENCY ON EXPENDITURE. [SECTIONS 1 THROUGH 9] MAY NOT BE

1 CONSTRUED TO REQUIRE IMPLEMENTATION OR ONGOING OPERATION OF THE PROGRAMS IN 53-6-1201(3)(D) THROUGH
2 (3)(G) WITHOUT A LINE ITEM APPROPRIATION IN THE GENERAL APPROPRIATIONS BILL INCLUDED FOR THAT PURPOSE.

3
4 NEW SECTION. Section 20. Codification instruction. (1) [Sections 1 through 9] are intended to be
5 codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections
6 1 through 9].

7 (2) ~~[Section 10]~~ is [SECTIONS 10 AND 19] ARE intended to be codified as an integral part of Title 53,
8 chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to ~~[section 10]~~ [SECTIONS 10 AND 19].

9 (3) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions
10 of Title 15, chapter 30, apply to [section 11].

11 (4) [Section 12] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions
12 of Title 15, chapter 31, apply to [section 12].

13
14 NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2005.

15
16 NEW SECTION. Section 22. Applicability. [This act] applies to tax years beginning after December
17 31, 2005.

18 - END -